

MARY BAYES, ET AL. vs BIOMET, INC., ET AL.
Dr. Thomas B. Fleeter on 01/15/2020

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MISSOURI
3 EASTERN DIVISION
4 -----X
5 MARY BAYES AND PHILIP BAYES, :
6 Plaintiffs, :
7 v. : Case No.
8 BIOMET, INC., BIOMET : 4:13-cv-00800-SRC
9 ORTHOPEDICS, LLC, BIOMET U.S. :
10 RECONSTRUCTION, LLC, BIOMET :
11 MANUFACTURING, LLC f/k/a BIOMET:
12 MANUFACTURING CORP., :
13 Defendants. :
14 -----X
15 Video Deposition of DR. THOMAS B. FLEETER
16 Reston, Virginia
17 Wednesday, January 15, 2020
18 1:14 p.m.
19
20 Job No.: 279586
21 Pages 1 - 206
22 Reported by: Lisa Barbera

1 a vertical -- you know, 60-degree angle that you
2 described in the end of your report from your
3 review of the September 24, 2010, X-rays taken
4 over 2 years after the original surgery by
5 Dr. Martin; correct?

6 A. I guess I'm not sure -- I'm not quite
7 sure what your question was there.

8 Q. Okay. So Dr. Martin did not state after
9 surgery in any notes that there was an
10 inappropriate abduction angle with the left or
11 right acetabular component; correct?

12 MS. CALHOON: Object to form.

13 THE WITNESS: I can say he never used
14 the word inappropriate.

15 BY MR. ELLIOTT:

16 Q. But the postop X-rays that were
17 interpreted both said they were in a
18 well-positioned, bilateral position?

19 A. I agree that's what it said.

20 Q. Okay. Given your heavy emphasis on the
21 September 24, 2010, X-ray which showed an
22 abduction of 60 degrees, are you trying to suggest

1 Dr. Martin committed medical error by placing it
2 at that degree during the original surgery?

3 A. I'm not alleging that Dr. Martin did
4 anything. I'm just alleging that -- not alleging.

5 I'm stating and I -- for the record, I'm not
6 exactly sure what the date was. I'd actually have
7 to look at the X-rays again myself and see what
8 date they were.

9 But it would require an AP of the
10 pelvis, not an AP of just the hip, to measure that
11 angle. And there was one taken around that time.
12 I just don't remember what the date was.

13 Q. Well, I do have a copy of the left one.
14 I'm not going to mark it as an exhibit today,
15 because I think you're confined to the four
16 corners of your report of November 1st, 2019. And
17 if you start giving opinions on that specific
18 X-ray, then, you know, it would be new testimony,
19 new evidence that I never had an opportunity to
20 prepare for today, and I think it's late.

21 And I don't think -- you know, we'll
22 move to strike any discussion regarding your

1 MS. CALHOON: Object to form and
2 foundation.

3 THE WITNESS: I didn't say that. There
4 were many X-rays taken of her hip along the
5 way, and I just -- I'd have to look at each
6 one to decide which one.

7 But my concern is that all along from
8 the first postoperative X-ray along that I
9 could measure, all of her hips showed that
10 her acetabulum was more abducted than I would
11 have liked to see it.

12 BY MR. ELLIOTT:

13 Q. Not to beat a dead horse, but you do not
14 disagree -- I'm sorry.

15 Not to beat a dead horse but --

16 A. That horse has been long dead.

17 Q. Yes. That's unfortunate, but she's got
18 a complicated case, so.

19 You agree that the record shows that
20 Dr. Martin did not do anything wrong during the
21 original implantation of her left and right hip;
22 correct?

1 A. Does it rise to the level of

2 malpractice? No.

3 Does it rise to the fact that I wished
4 he'd put her left hip acetabular component in a
5 less abducted position and that we wouldn't be
6 sitting in this room? I think that's highly
7 likely.

8 Q. Yeah. But we're just going to, I guess,
9 agree to disagree, because you did not comment on
10 the degree of the 2008 X-rays which two physicians
11 in this case put in the 40s --

12 A. Remember the doctor -- once again
13 Dr. Lux's --

14 Q. I didn't finish my question.

15 A. Once again, Dr. Lux's comments were in
16 his rebuttal, which was provided to me after I
17 wrote my letter. So I don't know how I'm supposed
18 to comment on a letter that I didn't have in my
19 possession. It hadn't been produced yet.

20 But he wrote it in his letter
21 afterwards, and he mismarked his X-ray, which
22 makes it more difficult.